

MORRIS COLLINS

VS.

Respondent

AND

Insurance Carrier

- (1) Did claimant suffer accidental injury to his left upper extremity and left ribs on or about October 13, 2000?
- (2) Did claimant's alleged accidental injury to his left upper extremity and left ribs arise out of and in the course of his employment with respondent?
- (3) Was timely notice given?
- (4) Did the employer/insurance carrier receive timely notice of preliminary hearing as required by K.S.A. 44-534a(a)?
- (5) Did the Administrative Law Judge exceed her jurisdiction by assessing benefits against the employer and its insurance carrier?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the record presented and for the purpose of preliminary hearing, the Appeals Board finds the matter should be remanded to the Administrative Law Judge for additional hearings as respondent was not provided timely notice of hearing pursuant to K.S.A. 44-534a.

At preliminary hearing, claimant placed into evidence a copy of the Notice of Preliminary Hearing showing a certificate of mailing dated January 23, 2001, for the 9:00 a.m., February 1, 2001, hearing. K.S.A. 44-534a requires that, when a matter is set for preliminary hearing, the administrative law judge "shall give at least seven days' written notice by mail to the parties of the date set for such hearing."

In this instance, claimant's attorney provided notice of hearing, mailing same as noted in its certificate of mailing on January 23, 2001, to both respondent and its insurance carrier. Claimant contends the notice of preliminary hearing was timely, as counting from January 23, 2001, respondent would have had seven days' notice of the February 1, 2001, hearing.

In reviewing the evidence, the Board finds this notice defective. The method of computing time is discussed in K.A.R. 51-17-1 which provides:

The time within which an act is to be done shall be computed by excluding the first day and including the last; if the last day be a Saturday or Sunday or a statutory holiday, it is to be excluded.

Following the regulation and excluding the first day, i.e., January 23, 2001, the seventh day would be February 1, 2001, also excluding intervening Saturdays, Sundays and holidays. As the hearing was noticed for 9:00 a.m., February 1, 2001, this would not allow respondent a "full" 7 days' notice. The statute does not allow for partial days, but instead requires at least 7 days' written notice. Therefore, respondent was provided, at most, six full days' notice of the hearing. See *also* Rayman v. Spears Manufacturing, WCAB Docket No. 213,649 (May 1997).

The Appeals Board finds that respondent was not provided notice of hearing as required by K.S.A. 44-534a(a). The Appeals Board, therefore, reverses and remands this matter back to the Administrative Law Judge for a preliminary hearing with timely notice to all parties as is required by K.S.A. 44-534a.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes dated February 1, 2001, should

be, and is hereby, vacated, and this matter is remanded back to the Administrative Law Judge for further proceedings consistent with this Order.

IT IS SO ORDERED.

Dated this ____ day of April 2001.

BOARD MEMBER

c: Steven R. Wilson, Wichita, KS
Victor B. Finkelstein, Overland Park, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director